INDEX.

ACTION.

When a party has two remedies, inconsistent with each other, any decisive act by him, done with knowledge of his rights and of the facts, determines his election of the remedy. *Robb* v. *Vos*, 13.

ADMIRALTY.

1. In view of the large number of ferry-boats plying between New York and the opposite shores, steamers running up and down the river should keep a sufficient distance from the docks, and hold themselves under such control as to enable them to avoid ferry-boats leaving their slips upon their usual schedules of time. *The Breakwater*, 252.
2. Rule 19, (Rev. Stat. § 4233,) requiring, in the case of crossing steamers, that the one having the other on her starboard side should keep out of the way of the other, is applicable to an ocean steamer meeting a ferry-boat in the harbor of New York on her starboard side. *Ib.*
3. Exceptions to the operation of the rule should be admitted with great caution, and only when imperatively required by the special circumstances mentioned in rule 24. *Ib.*
4. The Pavonia was a ferry-boat, running at regular intervals between a slip at the foot of Chambers Street, New York, and the Erie Railway Station, on the opposite Jersey shore, northwesterly from Chambers Street. As she was leaving her slip on the afternoon of December 16, 1887, the steamer Breakwater, arriving from sea, was proceeding northward along the line of the New York docks and about four hundred feet distant therefrom, and had arrived opposite Barclay Street, which is distant about 880 feet to the southward from Chambers Street. The Breakwater was on her way to her dock, at the foot of Beach Street, in New York, a short distance northerly from Chambers Street. She was then moving at the rate of about six miles an hour. The tide was strong ebb, the wind northwest, and the weather clear. As the Pavonia moved slowly out under a hard-a-port wheel, her bow was swung southerly down the river by the force of wind and tide. She sounded a single whistle, and the Breakwater replied with the same. The Pavonia then put her engine to full speed, and made another single whistle, to which the Breakwater made the same reply. Mean-

while the Pavonia had recovered from her downward swing, and swung up the river on her course. When the Breakwater sounded her first whistle, her engines were immediately stopped: when she sounded her second, they were put full speed astern. Notwithstanding this, the stem of the Breakwater struck the Pavonia on her port side, and seriously damaged her. *Held*, (1) That when the Pavonia sounded a single whistle, the statutory rules became operative, and it was the duty of the Breakwater to keep out of the way: (2) that no fault could be imputed to the Pavonia for leaving when she did, or for her failure to stop and reverse; (3) that the Breakwater was alone in fault. *Ib.*

APPEAL.

See JURISDICTION, A, 15;
PRACTICE, 4, 6.

ATTORNEY AT LAW.

See EQUITY, 1;
ESTOPPEL.

BANK.

In June, 1887, the Fidelity Bank of Cincinnati had a contract with the German-American Bank of Peoria "to credit sight items on any point in the United States east of Illinois, where there are banks, at par; and to make collections on same points" and "to credit the same at par when collected." At that time there also existed an arrangement between the Fidelity Bank and the Bank of Evansville in Indiana for mutual and reciprocal collection business. On the 14th of that month the German-American Bank sent to the Fidelity Bank for collection a sight draft on a firm in Terre Haute, endorsed "for collection." On the 16th this draft was forwarded to the Evansville Bank for collection. On the 18th the draft was sent by the Evansville Bank to a bank in Terre Haute for collection, and was collected by the latter bank on the 20th of June. On the morning of the 21st, before banking hours, the Evansville Bank received news of the collection, and after crediting the Fidelity Bank with it, as of June 20th, notified the Fidelity Bank of the payment and of the entry to credit by a letter which was received there on the 22d. On the 20th the Fidelity Bank was, and for ten days before it had been, insolvent. It was not open for business after the 20th, and on the 27th passed into the hands of a receiver. *Held*, that the Fidelity Bank, though it acquired the mere legal title to the draft, never became its equitable owner; that the notice on the draft that it was for collection bound all parties into whose hands it came; that the Evansville Bank could not by its entry of credit to the Fidelity Bank

release itself of its obligation to the German-American Bank; and that the mere fact that news of the condition of the Fidelity Bank had not reached the Evansville Bank at the time it made the entry was immaterial. *Evansville Bank* v. *German-American Bank*, 556.

See CRIMINAL LAW, 10, 11.

CASES AFFIRMED OR FOLLOWED.

1. *Duncan* v. *Missouri*, 152 U. S. 377, affirmed and followed. *Bobb* v. *Jamison*, 416.
2. *Horne* v. *George H. Hammond Co.*, 155 U. S. 393, affirmed and applied. *Cooper* v. *Newell*, 532.

See CONTRACT, 2; EQUITY, 7; CRIMINAL LAW, 5, 6; HABEAS CORPUS, 2; CUSTOMS DUTIES, 9; REMOVAL OF CAUSES, 4.

CASES DISTINGUISHED.

See HABEAS CORPUS, 2.

CASES EXPLAINED.

Commercial Bank of Pennsylvania v. *Armstrong*, 148 U. S. 50, shown not to conflict with this decision. *Evansville Bank* v. *German-American Bank*, 556.

CIRCUIT COURTS OF APPEALS.

See PRACTICE, 2.

CIRCUIT COURTS OF THE UNITED STATES.

See JURISDICTION, C;
PRACTICE, 2.

CIRCUIT COURT COMMISSIONER.

1. A commissioner of a Circuit Court is an officer of the court, authorized by law, and is entitled to his fees in the following cases when certified by the court as correct: (1) For entering on warrant the judgment of final disposition of a case, when required by rule of court; (2) for making transcripts of proceedings, when required by rule of court, to be sent up to court; (3) for making and certifying copies of subpœnas for marshal to serve on witnesses, when required by rule of court; (4) for making report to clerk of court and commissioner of internal revenue of cases heard and disposed of under the internal revenue laws, when required by rule of court; (5) for making entries on the docket in various cases of the name of an affiant, his official position, if any, date of issuing warrant, name of defendant and witnesses, and final disposition of the case, when required by rule of court. *United States* v. *Allred*, 591.

2. He is also entitled to his fees for administering oaths to deputy marshals to verify their accounts of service, when the regulations of the Department of Justice require such officers to certify on oath that their accounts rendered to the marshal are correct. *Ib.*

CLAIMS AGAINST THE UNITED STATES.

G. was a shipping commissioner at Mobile from June, 1889, to February, 1890. In November, 1889, the Secretary of the Treasury notified him that his compensation would thereafter be at a sum not exceeding $100 in any one month, and that no pay additional to that compensation would be allowed him for his services. In December, 1889, January, 1890, and February, 1890, each, he rendered an account claiming $25 in each month for salary of a clerk, payment of which being refused, he brought this action. *Held*, that he was not entitled to recover. *United States* v. *Gunnison*, 389.

See CIRCUIT COURT COMMISSIONER; JURISDICTION, E; POSTMASTER GENERAL; SUPERVISORS OF ELECTIONS; UNITED STATES, SUITS AGAINST.

COMMON CARRIER.

See RAILROAD.

CONFLICT OF LAWS.

See HABEAS CORPUS, 1.

CONSTITUTIONAL LAW.

1. P. being arrested in Texas on a requisition from the governor of Alabama for his extradition for trial in Alabama on an indictment for embezzlement and larceny, sought his discharge through a writ of *habeas corpus* on the ground of the invalidity of the indictment under the laws of Alabama. The Court of Criminal Appeals of Texas decided that, as it appeared that P. was charged by an indictment in Alabama with the commission of an offence there, and that all the other prerequisites for his extradition had been complied with, he should be extradited, leaving the courts of Alabama to decide whether the indictment was sufficient, and whether the statute of that State was in violation of the Constitution of the United States. *Held*, that this decision did not deny to P. any right secured to him by the Constitution and laws of the United States, and did not erroneously dispose of a Federal question. *Pearce* v. *Texas*, 311.
2. The act of August 2, 1886, c. 840, 24 Stat. 209, does not give authority to those who pay the taxes prescribed by it, to engage in the manufacture or sale of oleomargarine in any State which lawfully forbids such manufacture or sale, or to disregard any regulations which a State may lawfully prescribe in reference to that article; and that act was

not intended to be, and is not, a regulation of commerce among the States. *Plumley* v. *Massachusetts*, 461.

3. The statute of Massachusetts of March 10, 1891, c. 58, "to prevent deception in the manufacture and sale of imitation butter," in its application to the sales of oleomargarine, artificially colored so as to cause it to look like yellow butter and brought into Massachusetts, is not in conflict with the clause of the Constitution of the United States investing Congress with power to regulate commerce among the several States. *Ib.*
4. *Leisy* v. *Hardin*, 135 U. S. 100, 124, is restrained in its application to the case there actually presented for determination, and held not to justify the broad contention that a State is powerless to prevent the sale of articles of food manufactured in or brought from another State, and subjects of traffic or commerce, if their sale may cheat the people into purchasing something they do not intend to buy, and which is wholly different from what its condition and appearance import. *Ib.*
5. The judiciary of the United States should not strike down a legislative enactment of a State, especially if it has direct connection with the social order, the health and the morals of its people, unless such legislation plainly and palpably violates some right granted or secured by the National Constitution, or encroaches upon the authority delegated to the United States for the attainment of objects of national concern. *Ib.*
6. When a bridge is lawfully built over a navigable river within the limits of a State, and is maintained as a lawful structure, its owners may at all times have recourse to the courts to protect it; and any relief which may be granted by the court on such application is not a regulation of commerce. *Texas & Pacific Railway* v. *Interstate Transportation Co.*, 585.
7. Section 439 of the Penal Code of California, making it a misdemeanor for a person in that State to procure insurance for a resident in the State for an insurance company not incorporated under its laws and which had not filed the bond required by the laws of the State relative to insurance, is not a regulation of commerce, and does not conflict with the Constitution of the United States, when enforced against the agent of a New York firm in California who, through his principals and by telegram, procures for a resident in California, applying for it there, marine insurance on an ocean steamer, from an insurance company incorporated under the laws of Massachusetts, and which had not filed the bond required by the laws of California. *Hooper* v. *California*, 648.
8. While a State cannot exclude from its limits a corporation engaged in interstate or foreign commerce, or a corporation in the employment of the general government, by the imposition of inadmissible conditions, it may subject it to a property taxation incidentally affecting its occu-

pation in the same way that business of individuals or other corporations is affected by common governmental burdens. *Postal Telegraph Cable Co.* v. *Adams*, 688.

9. The tax imposed by the laws of Mississippi, (Code of 1880, c. 10, § 585; Sess. Laws 1888, c. 3,) when enforced against a Telegraph Company, organized under the laws of another State and engaged in interstate commerce within Mississippi, being graduated according to the amount and value of the company's property measured by miles, and being in lieu of taxes directly levied on the property, is a tax which it is within the power of the State to impose; and the exercise of that power, as expounded by the highest judicial tribunal of the State, does not amount to a regulation of interstate commerce, or put an unconstitutional restraint thereon. *Ib.*

See JURISDICTION, A, 16.

CONTRACT.

1. Where the railroad bridge of a bridge company and the railroads of several railroad companies form a continuous line of railway transportation, the liability of two of the railroad companies to pay the bridge company a certain proportion of tolls upon the bridge, and of deficiencies therein, according to a contract with the bridge company, executed by another of the railroad companies for the benefit and at the request of these two, they undertaking to assume all the liabilities and to be entitled to all the benefits of the bridge contract, "as if the same had been specifically named in and made a part of the ninth article of" a lease of its railroad from it to them, by which article they agreed to assume and carry out certain contracts of transportation over railroads of other companies, is not affected by the termination of the lease by eviction or otherwise. *Pittsburgh, Cincinnati & St. Louis Railway Co.* v. *Keokuk & Hamilton Bridge Co.*, 156.
2. *Pittsburgh &c. Railway Co.* v. *Keokuk & Hamilton Bridge Co.*, 131 U. S. 371, followed. *Ib.*
3. An agreement by a Finance Company to undertake the work of the reorganization of a railway company and the procuring of a loan to it is *held* to have been executed by it so far as to entitle it to a commission of ten per cent on the par value of the bonds issued by the company, payable in such bonds at par. *Burke* v. *American Loan & Trust Co.*, 534.

COURT AND JURY.

1. It is common practice and no error to recall a jury, after they have been in deliberation for a length of time, for the purpose of ascertaining what difficulties they have in the consideration of the case, and of making proper efforts to assist them in their solution, and the time at which such recall shall be made must be left to the discretion of the trial court. *Allis* v. *United States*, 117.

2. There is nothing in the record to show that the court in this case abused this discretion. *Ib.*
3. The rule repeated that in a Federal court the presiding judge may express to the jury his opinion as to the weight of evidence. *Ib.*
4. In making such a statement he is under no obligation to recapitulate all the items of the evidence, nor even all bearing on a single question. *Ib.*

COURT OF CLAIMS.

See JURISDICTION, E.

COURT OF PRIVATE LAND CLAIMS.

See JURISDICTION, A, 3, 5.

CRIMINAL LAW.

1. When the record in a criminal case brought here by the defendant is meagre, containing only a small portion of the evidence, this court must assume, as the verdict was sustained by the court below, that the testimony was sufficient to establish defendant's guilt. *Allis* v. *United States*, 117.
2. When a defendant is tried on an indictment charging false entries at different times running through several months, it is no error to admit evidence of such acts during the whole period, although he may be found guilty of only one such act. *Ib.*
3. Evidence having been given bearing upon one such alleged false entry, made at a period considerably later than the only one of which the defendant was found guilty, no advantage can be taken by the defendant here of the refusal of the court below to allow a cross question touching such evidence. *Ib.*
4. Courts of justice are invested with authority to discharge a jury from giving any verdict, whenever in their opinion, taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated, and to order a trial by another jury; and a defendant is not thereby twice put in jeopardy, within the meaning of the Fifth Amendment to the Constitution of the United States. *Thompson* v. *United States*, 271.
5. Sundry errors in the charge of the court below commented on, and *Gourko* v. *United States*, 153 U. S. 183, approved and applied to the issues in this case, viz.: (1) A person who has an angry altercation with another person, such as to lead him to believe that he may require the means of self-defence in case of another encounter, may be justified in the eye of the law, in arming himself for self-defence; and if, on meeting his adversary on a subsequent occasion, he kills him, but not in necessary self-defence, his crime may be that of manslaughter or murder, as the circumstances on the occasion of the killing make it the one or the other; (2) if, looking alone at those circumstances,

his crime be that of manslaughter, it is not converted into murder by reason of his having previously armed himself. *Ib.*

6. *Pointer* v. *United States*, 151 U. S. 396, sustained and applied to the point that it is not error to join distinct offences in one indictment, in separate accounts, against the same person. *Ingraham* v. *United States*, 434.
7. A person who presents to the Third Auditor of the Treasury what purports to be an affidavit before a justice of the peace in support of a fraudulent claim against the government, is estopped to deny that the document was not an affidavit when presented in evidence in criminal proceedings against him for such fraudulent act. *Ib.*
8. It is not necessary, in the first instance, in order to prove such offence, to produce the commission of the justice, or to introduce other official evidence of his appointment. *Ib.*
9. In an indictment for a statutory offence, while it is doubtless true that it is not always sufficient to use simply the language of the statute in describing the offence, yet, if such language is, according to the natural import of the words, fully descriptive of the offence, then ordinarily it is sufficient. *Potter* v. *United States*, 438.
10. A charge in an indictment that the defendant was president of a national bank, and as such on a day and at a place named unlawfully, knowingly, and wilfully certified a certain cheque, (describing it,) drawn upon the bank, and that the drawer did not then and there have on deposit with the bank an amount of money equal to the amount specified in the cheque, is a sufficient averment of the offence described in Rev. Stat. § 5208, the punishment for which is provided for in the act of July 12, 1882, c. 290, 22 Stat. 162, 166. *Ib.*
11. As it is of the essence of the offence against those acts that the criminal act should have been done wilfully, a person charged with it is entitled to have submitted to the jury, on the question of "wilful" wrongdoing, evidence of an agreement on the part of the officers of the bank that it should be treated as a loan from day to day, secured by ample collateral, and that for the cheque certified each day there was deposited each day an ample amount of cash. *Ib.*
12. In a criminal trial the burden of proof is on the government, and the defendant is entitled to the benefit of a reasonable doubt; and when testimony contradictory or explanatory is introduced by the defendant, it becomes a part of the burden resting upon the government, to make the case so clear that there is no reasonable doubt as to the inferences and presumptions claimed to flow from the evidence. *Ib.*
13. An averment in an indictment for murder that the defendant is "a white person and not an Indian" is sufficient to show that he is outside of the first two clauses of Rev. Stat. § 2146. *Westmoreland* v. *United States*, 545.
14. An averment in an indictment that the defendant was not a citizen of the Indian Territory will be sustained as a sufficient averment that he does not come within the provisions of article 38 of the treaty of April

28, 1866, with the Choctaws and Chickasaws, 14 Stat. 769, 779, when no challenge of the indictment in this respect is made prior to the trial, and the question is only made by motion in arrest of judgment. *Ib.*

15. A charge in an indictment which charges that the defendant administered to the deceased strychnine and other poisons with the unlawful and felonious intent to take his life, and that so administered they did have the effect of causing death, is sufficient. *Ib.*
16. In charging the causing of death by poisoning, it is unnecessary to aver that the poison was taken into the stomach of the deceased. *Ib.*

CUSTOMS DUTIES.

1. In an action to recover duties alleged to have been illegally exacted, the burden is on the importer to overcome the presumption of a legal collection by proof that their exaction was unlawful. *Erhardt* v. *Schroeder*, 124.
2. Although the appraisement of goods by customs officers is not ordinarily open to judicial review, that rule does not apply when the value is determined by a classification made by the officer. *Ib.*
3. The provision in Schedule F, of the act of March 3, 1883, c. 121, 22 Stat. 488, 503, imposing a duty upon leaf tobacco, evidently requires that 85 per cent of half leaves are to be of the requisite size and necessary fineness of texture for wrappers, or, in other words, that each of 85 half leaves out of 100 half leaves must contain a portion sufficiently fine in texture, of the requisite size to make at least one wrapper. *Ib.*
4. The further provision in that schedule, "of which more than 100 leaves are required to weigh a pound," refers to whole leaves, in their natural state. *Ib.*
5. The remedy of an importer on a question of valuation is to call for a reappraisement; though, if his contention be that a jurisdictional question exists, he may make his protest, pointing out the defect, and stand upon it as the ground of refusal to pay the increased duty. *Origet* v. *Hedden*, 228.
6. What an importer's agent says to an assistant appraiser, or conversations had subsequently to the appraisement, are not competent evidence in an action like this. *Ib.*
7. The court below properly excluded a question propounded to the merchant appraiser as to whether or not he and the general appraiser did not agree to apply the valuation of one case in each invoice to the entire importation of which it was a part; and also the question whether or not those goods in the several cases were all of the same character as to value. *Ib.*
8. Reappraisers may avail themselves of clerical assistance to average appraisements given by different experts, when it appears that it was for their guidance only. *Ib.*
9. Under the plaintiff's protest the question is not open that Rev. Stat.

§ 2900 is unconstitutional in its provisions for fixing or authorizing 20 per cent additional duty; but the question has been disposed of on its merits in *Passavant* v. *United States*, 148 U. S. 214. *Ib.*

10. If an importer is afforded such notice of a reappraisement and hearing as enables him to give his views and make his contention in respect of the value of his goods, he cannot complain, even though he be not allowed to be present throughout the proceedings on the reappraisement, or to hear and examine all the testimony, or to cross-examine the witnesses. *Ib.*
11. It appeared in this case that the merchant appraiser examined the goods sufficiently to satisfy him that they were the same order of goods that his firm imported. *Held*, that this established the familiarity required by the statute, and placed his qualifications as an expert beyond reasonable doubt. *Ib.*
12. An importer whose goods, in several packages, are sent by the collector to the public store and are there examined, cannot take advantage of the fact that the appraisers in making up their opinion did not examine every case, unless it also appears that they were directed by the collector to make such examination of all, and failed to do so. *Ib.*
13. The valuation of imported merchandise by designated officials is conclusive in the absence of fraud, when the official has power to make it. *Muser* v. *Magone*, 240.
14. In case of disagreement between the general appraiser and the merchant appraiser in regard to the true market value of imported goods, the decision of the collector is final and fixes the valuation. *Ib.*
15. In this case the appraisers evidently considered that the market value of the goods could be satisfactorily ascertained by the method which they pursued, and their determination, in the absence of fraud, cannot be impeached by requiring them to disclose the reasons which impelled their conclusions, or by proving remarks made by them. *Ib.*
16. The dutiable market value of goods is to be determined by their general market value, without regard to special advantages which the importer may enjoy; and in ascertaining that value, it is proper in some instances to consider the cost of production, including such items of expense as designs, salary of buyer, clerk hire, rent, interest, and percentage on aggregate cost of the business. *Ib.*

See STATUTE, A, 2.

ELECTION OF REMEDY.

See ACTION.

EQUITY.

1. When an attorney at law appears, without the knowledge or consent of his principal, on behalf of a defendant of record in an action at law

of the existence of which the principal is ignorant, and consents to judgment and the issue of execution and the sale of the party's interest in real estate thereunder, and such sale is made, all the proceedings being regular on their face, the remedy of the injured party, when the facts come to his knowledge, is in equity. *Robb* v. *Vos*, 13.

2. A Circuit Court of the United States has jurisdiction of such a suit in equity, if the citizenship of the parties permits, although the proceedings at law under which the sale was made were had in a state court. *Ib.*
3. The general principles of equity jurisprudence, as administered in this country and in England, permit a bill to quiet title to be filed only by a party in possession, against a defendant who has been ineffectually seeking to establish a legal title by repeated actions of ejectment; and as a prerequisite to such bill it was necessary that the title of the plaintiff should have been established by at least one successful trial at law. *Wehrman* v. *Conklin*, 314.
4. The statutes of Iowa, (Code, § 3273,) having enlarged the jurisdiction of the courts of equity of that State by providing that "an action to determine and quiet title to real property may be brought by any one having or claiming an interest therein, whether in or out of possession of the same, against any person claiming title thereto, though not in possession," such enlarged jurisdiction, if sought to be enforced in a Federal court, sitting within the State, can only be exercised subject to the constitutional provision entitling parties to a trial by jury, and to the provision in Rev. Stat., § 723, prohibiting suits in equity where a plain, complete and adequate remedy may be had at law. *Ib.*
5. In December, 1859, the land, the subject of controversy in this suit, was patented to A. W. In the same month it was conveyed by A. W. and his wife to F. W. In January, 1861, G. caused it to be attached as the property of A. W. in an action founded upon a judgment obtained against him in a court in Wisconsin, which case proceeded to judgment against A. W. in September, 1861. Prior to levy of execution in that case, G., in a suit in equity against A. W. and F. W., obtained a decree declaring the deed to be void and ordering the land to be sold in satisfaction of the judgment at law. Levy was made, the land was sold, and the sheriff made a deed conveying the property to G., who entered into possession, paid taxes, and in 1881, 1882, and 1884 conveyed the lands to C., who entered into possession and made valuable improvements upon them. For thirty years the taxes have been paid by C. and his privies in estate. F. W. having set up a claim to the property by reason of alleged irregularities in the proceedings by which G. acquired title, and having commenced an action in ejectment to enforce that claim, C. filed this bill in equity setting up the foregoing facts, averring that the deed by A. W. to F. W. was a cloud upon his title, and praying for a stay of the action of ejectment, for an injunction against further proceedings at law, and for a decree that C. held

the lands free and clear from all claims of F. W. A demurrer was interposed setting up among other things that the writ of attachment was not attested by the seal of the court; that no service of summons or notice was had upon A. W. in the State of Iowa; and other matters named in the opinion. The demurrer being overruled, answer was made, and a final decree was made in plaintiff's favor. *Held*, (1) That the plaintiff had no adequate remedy at law, and the Circuit Court consequently had jurisdiction in equity; (2) that if no action in ejectment had been begun at law, the long continued adverse possession of the plaintiff, and the equitable title set up in the bill, would have been a sufficient basis for the maintenance of the suit; (3) that, where title to real property is concerned, equity has a concurrent jurisdiction, which affords more complete relief than can be obtained in a court of law; (4) that the bill was in the nature of a judgment creditor's bill, setting up defects of title, against which they had a right to ask relief from a court of equity; (5) that it was immaterial whether the defects in the title of G. were well founded or not; (6) that the absence of the seal did not invalidate the writ. *Ib.*

6. A court of equity, in the exercise of its inherent power to do justice between parties, will, when justice demands it, refuse relief, even if the time elapsed without suit is less than that prescribed by the statute of limitations. *Alsop* v. *Riker*, 448.
7. The length of time during which a party neglects the assertion of his rights which must pass in order to show laches in equity, varies with the peculiar circumstances of each case, and is not subject to an arbitrary rule. *Halstead* v. *Grinnan*, 152 U. S. 412, affirmed and applied to this point. *Ib.*
8. The facts in this case, detailed in the opinion, disclose such laches on the part of Riker in asserting the rights which he here claims, that a court of equity should refuse to interpose, without inquiry whether the suit can or cannot be excluded from the operation of the statute of limitations of the State of New York. *Ib.*
9. A decree for the specific performance of a contract for the sale of real estate does not go as a matter of course, but is granted or withheld according as equity and justice seem to demand in view of all the circumstances of the case. *McCabe* v. *Matthews*, 550.
10. A. contracted with B. in writing for the sale to him of a part interest in lands in Florida then worth about $300 to be acquired by B. A. paid B. one dollar, and after that did nothing to assist B. He waited nine years after the contract was made, nearly as much after he had good reason to believe that B. repudiated all liability under it, nearly five years after B. had filed his deed of the property in the public records, two years after he received actual notice of that fact, and then, when the property had reached a value of $15,000, without any tender of money or other consideration filed a bill for specific performance. *Held*, that the long delay was such laches as forbade a court of equity to interfere. *Ib.*

11. When a court of equity is satisfied that irreparable injuries may be occasioned to a bridge over a navigable river by careless or wanton action on the part of navigators, the ordinary rule that the court will not act where there is a dispute about the title or the extent of the legal rights of the parties does not apply, but it may grant relief by injunction before a trial at law. *Texas & Pacific Railway Co.* v. *Interstate Transportation Co.*, 585.

12. In this case, as the exigency created by the existence of an unusual flood, which was made the principal foundation for the bill, has long since passed away, and as the decree below dismissing the bill reserved the right of the complainant to bring an action for the recovery of its damages, the decree below is amended so that it shall be without prejudice generally, and is otherwise affirmed. *Ib.*

13. In a case referred to a master to report the evidence, the facts, and his conclusions of law, there is a presumption of correctness as to his finding of facts similar to that in a case of a finding by a referee, the special verdict of a jury, the findings of a Circuit Court in a case tried by the court under Rev. Stat. § 469, or in an admiralty cause appealed to this court. *Davis* v. *Schwartz*, 631.

See JURISDICTION, C, 1, 2.

ESTOPPEL.

In this case it appeared that, after the said sale on execution of the plaintiff's interest in the realty, the proceeds passed, under order of court, into the hands of his attorney of record for the benefit of his principal; and that the principal, after knowledge of all the facts, appeared in an action in the state court to which he had been summoned, and set up a claim to those proceeds, founded upon the proceedings under the judgment and execution. *Held*, that he was estopped from proceeding in equity, to set aside the sale on the ground that the attorney had no authority to appear for him, and that this estoppel was not affected by the fact that, before filing his bill in equity in the Circuit Court, he withdrew his pleading in the state court, and filed instead thereof a demurrer which was sustained. *Robb* v. *Vos*, 13.

See CRIMINAL LAW, 7;
EQUITY, 3, 4, 5, 7.

EVIDENCE.

See CRIMINAL LAW, 7, 8, 12; PATENT FOR INVENTION, 14;
CUSTOMS DUTIES, 6; JURISDICTION, A, 12.

EXCEPTION.

Where a party excepts to a ruling of the court, but, not standing upon his exception, elects to proceed with the trial, he thereby waives it. *Campbell* v. *Haverhill*, 610.

FEES.

See CIRCUIT COURT COMMISSIONER; SUPERVISORS OF ELECTIONS.

HABEAS CORPUS.

1. Whether an offence described in an indictment in a state court is an offence against the laws of that State and punishable thereunder, or whether it is made by Federal statutes an offence against the United States, exclusively cognizable by their courts, and whether the same act may be an offence against both national and state governments, punishable in the tribunals of each, without infringing upon the constitutional guaranty against being twice put in jeopardy of limb for the same offence, are questions which a state court of original jurisdiction is competent to decide in the first instance; and, (its obligation to render such decision as will give full effect to the supreme law of the land, and protect any right secured by it to the accused, being the same that rests upon the courts of the United States,) the latter, if applied to for a writ of *habeas corpus* in such case, should decline to issue it unless it also appears that the case is one of urgency. *New York* v. *Eno*, 89.
2. *Ex parte Royall*, 117 U. S. 241, followed, and distinguished from *In re Loney*, 134 U. S. 372. *Ib.*
3. The proper time, in such case, to invoke the jurisdiction of this court is after the claim of the accused of immunity from prosecution in the state court has been passed upon by the highest court of the State adversely to him. *Ib.*
4. P., being adjudged guilty of contempt by a state court, and sentenced to fine and imprisonment therefor, applied to the District Court of the United States for a writ of *habeas corpus* upon the ground that the statute of the State under which the proceedings took place of which his conviction and punishment for contempt formed a part, were in contravention of the Constitutions of the United States and of the State. The District Judge discharged the writ and remanded the petition. It was conceded that the validity of the proceedings in the state court could have been tested by the Supreme Court of the State on *certiorari* or *habeas corpus*, and no reason appeared why a writ of error could not have been applied for from this court to the state court. *Held*, that, without considering the merits of the question discussed, the judgment of the court below should be affirmed. *Pepke* v. *Cronan*, 100.

See JURISDICTION, A, 17.

INDIAN.

1. The findings of the court below touching the expenditures by the United States to support and keep a blacksmith for the use of the

Indians are too indefinite to allow them to be made the subject of a set-off. *United States* v. *Blackfeather*, 180.

2. The United States having undertaken by Article VII of the Treaty of August 8, 1831, with the Shawnees to "expose to public sale to the highest bidder" the lands ceded to them by the Shawnees, and having disposed of a large part of the same at private sale, were thereby guilty of a violation of trust; and as all public lands of the United States were, by the act of April 24, 1820, c. 51, 3 Stat. 566, made open to entry and sale at $1.25 an acre, the measure of damages for the violation is the difference between the amounts realized, and the statutory price. *Ib.*
3. Under the provisions of said treaty the Shawnees were entitled to interest on such damages as an annuity. *Ib.*
4. The United States is not responsible to the Shawnees for moneys paid under a treaty to guardians of orphans of the tribe, appointed by the tribal council, who had embezzled the money when so paid. *Ib.*
5. Whether the Shawnees are entitled to recover in these proceedings money embezzled by an Indian superintendent, *quære*. *Ib.*
6. There was no error in the action of the court below ordering a percentage allowance to counsel. *Ib.*
7. The Cherokees and the Delawares having, on the 8th day of April, 1867, in pursuance of the provisions of the treaty of July 19, 1866, 14 Stat. 799, between the United States and the Cherokee Nation, entered into a contract, whereby it was agreed that, on the fulfilment by the Delawares of the stipulations on their part contained in said contract, all the members of that tribe, registered as provided in said contract, should become members of the Cherokee Nation, with the same rights and immunities and the same participation (and no other) in the national funds as native Cherokees, except as otherwise provided in the contract, the so registered Delawares were, on such fulfilment of their stipulations, thereby incorporated into the Cherokee Nation, and, as members and citizens thereof, were entitled to equal rights in the lands of that Nation and their proceeds. *Cherokee Nation* v. *Journeycāke*, 196.
8. A stipulation on the part of the Cherokees in an agreement made by them with the Shawnees under authority of the act of October 1, 1890, c. 1249, 26 Stat. 636, that the Shawnees in consideration of certain payments by them, etc., "shall be incorporated into and ever after remain a part of the Cherokee Nation on equal terms in every respect and with all the privileges and immunities of native citizens of said Cherokee Nation," secured to the Shawnees equal rights with the Cherokees in that which was the common property of the Cherokee Nation, namely, the reservation and the outlet as well as all profits and proceeds thereof. *Cherokee Nation* v. *Blackfeather*, 218.

INSOLVENT DEBTOR.

See LOCAL LAW.

INSURANCE.

See CONSTITUTIONAL LAW, 7.

JUDGMENT.

See EQUITY, 1.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. A finding of fact by the Court of Claims, where there is nothing in the other findings or elsewhere in the record which authorizes this court to go behind that finding and conclude that there was error in respect thereof, will not be reviewed here. *Talbert* v. *United States*, 45.
2. The questions that, the title of some of the parties to the land being in dispute, such titles must be settled before partition could be made; that the interests of several of the defendants were adverse to each other; and that as some of these defendants were citizens of the same State, it would raise controversies beyond the jurisdiction of the Circuit Court to decide, not having been certified to this court, are not passed upon. *Greeley* v. *Lowe*, 58.
3. The provisions in the act of March 3, 1891, c. 539, 26 Stat. 854, "to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," authorizing this court to amend the proceedings of the court below, and to cause additional testimony to be taken, are not mandatory, but only empower the court to direct further proofs, and to amend the record, if in its judgment the case demands its interposition to that effect. *United States* v. *Coe*, 76.
4. The judicial action of all inferior courts established by Congress may, in accordance with the Constitution, be subjected to the appellate jurisdiction of the Supreme Court of the United States. *Ib.*
5. An appeal lies to this court from a judgment of the Court of Private Land Claims over property in the Territories. *Ib.*
6. The rule reiterated that where a judgment or decree is joint, all the parties against whom it is rendered must join in the writ of error or appeal, unless there be summons and severance or the equivalent. *Sipperley* v. *Smith*, 86.
7. Rulings not specifically excepted to below are not reviewable here. *Allis* v. *United States*, 117.
8. This court has no jurisdiction to review a judgment of the Supreme Court of the State of Washington, denying a petition for a rehearing which had been presented to the Supreme Court of the Territory of Washington touching a cause therein decided, and had been transferred to the Supreme Court of the State under the provisions of the act of February 22, 1889, c. 180, 25 Stat. 676, admitting that State to the Union. *Northern Pacific Railroad Co.* v. *Holmes*, 137.
9. This court is not called upon to consider errors assigned by an appellee

who has taken no appeal from the judgment below. *United States* v. *Blackfeather*, 180.

10. Final judgments of Circuit Courts of the United States in actions of assumpsit can only be revised in this court on writ of error. *Deland* v. *Platte County*, 221.
11. In this court, acting under its appellate jurisdiction, whatever was matter of fact in a state court, whose judgment or decree is under review, is matter of fact here. *Lloyd* v. *Matthews*, 222.
12. Whenever a court of one State is required to ascertain what effect a public act of another State has in that other State, the law must be proved as a fact. *Ib.*
13. When in the courts of a State the validity of a statute of another State is not drawn in question, but only its construction, no Federal question arises. *Ib.*
14. The decision by the highest court of the State of Kentucky that the laws of the State of Ohio permit an insolvent debtor to prefer a creditor, which was made in a case in which the assignee of the insolvent, a party to the suit contesting the preference, failed to plead the construction given the Ohio statutes by the courts of Ohio, or to introduce the printed books of cases adjudged in the State of Ohio, or to prove the common law of that State by the parol evidence of persons learned in that law, or to put in evidence the laws of that State as printed under the authority thereof, or a certified copy thereof, raises no Federal question. *Ib.*
15. Judgments in a District or Circuit Court of the United States in cases brought under the act of March 3, 1887, c. 359, 24 Stat. 505, are not required to be brought here for revision by appeal only, but may be brought by writ of error; but they will be reëxamined here only when the record contains a specific finding of facts with the conclusions of law thereon. *Chase* v. *United States*, 489.
16. A judgment of the Supreme Court of the Territory of Utah against the tax collector of a municipal corporation for fifty dollars, the value of property levied on by him for unpaid municipal taxes, rendered on the ground that a municipal corporation, which is a small village but has extensive limits, cannot tax farming lands for municipal purposes lying within the corporate limits but outside of the platted portion of the city and so far removed from the settled portion thereof that the owner would receive no benefits from the municipal government, does not draw in question the validity of the organic law of the Territory or the scope of the authority to legislate conferred upon the territorial legislature by Congress; and as the matter in dispute, exclusive of costs, does not exceed the sum of five thousand dollars, nor involve the validity of a patent, or copyright, or of a treaty, this court is without jurisdiction to review it. *Linford* v. *Ellison*, 503.
17. A writ of error will not go from this court to an order of a judge of a Circuit Court of a State, made at chambers, remanding a prisoner in a *habeas corpus* proceeding. *McKnight* v. *James*, 685.

See HABEAS CORPUS, 3.

B. JURISDICTION OF CIRCUIT COURTS OF APPEALS.
See PRACTICE.

C. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. A suit in equity for the partition of land, wherein the plaintiff avers that he is seized as tenant in common of an estate in fee simple, and is in actual possession of the land described, and, after setting forth the interests of the other tenants in common, and alleging that no remedy at law exists to enable him to obtain his share of said lands in kind, or of the proceeds if sold, and that he is wholly without remedy except in chancery, prays for the partition of the land, and the segregation of his own share from that of the others, and incidentally that certain deeds may be construed and, if invalid, may be cancelled, and that he may recover his advances for taxes and expenses, is clearly a bill to enforce a claim and settle the title to real estate; and as such is a suit covered by § 8 of the act of March 3, 1875, c. 137, 18 Stat. 470, 472, of which the Circuit Court of the district where the land lies may properly assume jurisdiction. *Greeley* v. *Lowe*, 58.
2. Where the laws of a State give a remedy in equity, that remedy will be enforced in Federal courts in the State, if it does not infringe upon the constitutional right of the parties to a trial by jury. *Ib.*
3. A Circuit Court of the United States has jurisdiction to hear and determine, on appeal from the Board of General Appraisers, the questions of law and of fact involved in a decision of that Board sustaining the action of a collector of customs in exacting a charge for gauging molasses under the provisions of Rev. Stat. § 3023. *United States* v. *Jahn*, 109.
4. When the transcript of the record does not show that the Circuit Court had jurisdiction of a suit, where jurisdiction depends upon citizenship, and counsel, upon their attention being called to the matter, furnish nothing of record to supply the defect, the judgment must be reversed at the costs of the plaintiff in error, and the cause remanded to the Circuit Court for further proceedings. *Horne* v. *George H. Hammond Co.*, 393.
5. The Circuit Court of the United States for the Eastern District of Arkansas has jurisdiction of a suit in equity, brought by a citizen of Ohio against a citizen of Illinois, to remove a cloud from the title to real estate situated in that district. *Dick* v. *Foraker*, 404.
6. Without the statutory notice required by the Arkansas statute of March 12, 1881, No. 39, in proceedings for the fixing of tax liens for unpaid taxes upon lands in the State, and the sale of the lands for the non-payment thereof, the court can take no jurisdiction, and all proceedings therein are void; and the fact that the State appeared in such a suit where that notice had not been given, did not give the court jurisdiction, or render the sale valid. *Ib.*

7. Under the Judiciary Acts of the United States, a suit taken between a State and a citizen or corporation of another State is not a suit between citizens of different States; and the Circuit Court of the United States has no jurisdiction of it, unless it arises under the Constitution, laws, or treaties of the United States. *Postal Telegraph Cable Co.* v. *Alabama*, 482.
8. A Circuit Court has jurisdiction of a suit brought in the name of the State in which the circuit is situated, on the relation of a citizen of another State, to enforce the obligations of a bond given by citizens of the State in which the suit is brought for the faithful performance of his duties by a municipal officer of that State. *Indiana ex rel. Stanton* v. *Glover*, 513.

See EQUITY 2; REMOVAL OF CAUSES.

D. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

When a District Court has general jurisdiction in admiralty over the subject-matter and over the parties. it should be allowed to proceed to decision; and if it commits error in entertaining a claimant's contention against the charterers in the same suit with the libel against the ship, the error may be corrected on appeal. *In re N. Y. & Porto Rico Steamship Co., Petitioner*, 523.

E. JURISDICTION OF THE COURT OF CLAIMS.

1. The Court of Claims has no jurisdiction of a claim against the government for a mere tort. *Schillinger* v. *United States*, 163.
2. The owner of letters patent for an invention, who sets up in the Court of Claims that a contractor with the United States has made use of the patented invention in the execution of his contract without compensation to the claimant, and against his protest, whereby there was a wrongful appropriation of the patent by the United States for their sole use and benefit, and that a right has accrued to him to recover of the United States the damages thus done to him, to be measured by the saving or profit made by the United States, thereby sets up a claim sounding in tort, of which the Court of Claims has no jurisdiction. *Ib.*
3. When a contractor with the United States, in the execution of his contract, uses any patented tool, machine, or process, and the government accepts the work done under such contract, *quære*, whether it can be said to have appropriated and be in possession of any property of the patentee in such a sense that the patentee may waive the tort and sue as on an implied promise. *Ib.*
4. The act of March 3, 1883, c. 111, 22 Stat. 804, authorizing the Court of Claims to hear and determine the claims of the successors and representatives of Sterling T. Austin, deceased, for cotton alleged to have been taken from him in Louisiana by the authorities of the United States in 1863, 1864, and 1865, "any statute of limitation to the contrary notwithstanding, *provided, however*, that it be shown to the satis-

faction of the court that neither Sterling T. Austin, Senior, nor any of his surviving representatives, gave any aid or comfort to the late rebellion, but were throughout the war loyal to the government of the United States," made the establishment of loyalty in fact, as contra-distinguished from innocence in law produced by pardon, a pre-requisite to jurisdiction, and the Court of Claims, having found that the claimant was not thus loyal, properly dismissed the petition. *Austin* v. *United States*, 417.

LACHES.

See EQUITY, 5, 6, 7, 8.

LEASE.

A grant in a lease of forty acres of land, described by metes and bounds, for the sole and only purpose of boring, mining, and excavating for petroleum or carbon oil and gas, and piping of oil and gas over all the tract excepting reserved therefrom ten acres, also described by metes and bounds, upon which no well shall be drilled without the consent of the lessor, is a grant of all the gas and oil under the entire tract, conditioned that the lessee shall not drill wells on the ten-acre plat without the consent of the lessor. *Brown* v. *Spilman*, 665.

LOCAL LAW.

1. In Iowa, an insolvent debtor may make a mortgage or other conveyance of his property to one or more of his creditors, with intent to give them preference, and, in the absence of fraud, such mortgage or conveyance will not operate as a general assignment for the benefit of creditors, unless intended so to operate. *Davis* v. *Schwartz*, 631.
2. The fact that the property so conveyed was much in excess of the debts secured by the conveyance is not necessarily indicative of fraud; but in such cases the question of good faith is one of fact, and a mere error of judgment will not be imputed as a fraud. *Ib.*
3. The different transfers assailed in this suit examined, and, in the light of these rulings, held to be valid. *Ib.*
4. The different mortgages assailed in this suit were for several and separate interests; and the one to Kent not being of the amount requisite to give this court jurisdiction, the appeal as to him is dismissed. *Ib.*

Arizona. *See* MUNICIPAL BOND, 1.
Arkansas. *See* JURISDICTION, C, 6.
California. *See* CONSTITUTIONAL LAW, 7.
Indiana. *See* MUNICIPAL BOND, 3, 4.
Iowa. *See* EQUITY, 4.
Massachusetts. *See* CONSTITUTIONAL LAW, 2, 3.
Mississippi. *See* CONSTITUTIONAL LAW, 9.

MANDAMUS.

1. As mandamus will only lie to enforce a ministerial duty, as distinguished from a duty that is merely discretionary, and as the duty must exist at the time when the application is made, the Secretary of War cannot be required by mandamus to sign a contract for the performance of work by a party who is already under written contract with him to perform the same work for the government at a lower price and under different conditions. *United States* v. *Lamont*, 303.
2. A writ of mandamus cannot be issued to compel the court below to decide a matter before it in a particular way, or to review its judicial action had in the exercise of legitimate jurisdiction. *In re Rice, Petitioner*, 396.
3. A writ of mandamus cannot be used to perform the office of an appeal or writ of error, even if no appeal or writ of error is given by law. *Ib.*
4. The fact that, in the administration of the assets of an insolvent corporation in the custody of receivers, summary proceedings are resorted to, does not, in itself, affect the jurisdiction of the Circuit Court, as having proceeded in excess of its powers, and, where notice has been given and hearing had, the result cannot properly be interfered with by mandamus. *Ib.*

MASTER IN CHANCERY.

See EQUITY, 13.

MUNICIPAL BONDS.

1. The act of the legislature of Arizona of February 21, 1883, authorizing Pima County in that Territory to issue its bonds in aid of the construction of a railway, is a violation of the restrictions imposed upon territorial legislatures by Rev. Stat. § 1889, as amended by the act of June 8, 1878, c. 168, and the bonds issued under the authority assumed to be conferred by that statute created no obligation against the county which a court of law can enforce. *Lewis* v. *Pima County*, 54.
2. A certificate, made and payable in a State out of a particular fund, and purporting to be the obligation of a municipal corporation existing under public laws and endowed with restricted powers, granted only for special and local purposes of a non-commercial character, is not governed by the law merchant, and is open in the hands of subsequent holders to the same defences as existed against the original payee. *Indiana ex rel. Stanton* v. *Glover*, 513.
3. The sureties on the bond of the trustee of a municipal township in Indiana are not subjected by the Revised Statutes of that State, §§ 6006, 6007, to liability for the payment of warrants or certificates which, apart from those sections, it was not within the authority of the trustee to execute, or which were fraudulent in themselves. *Ib.*

4. A township trustee in Indiana cannot contract a debt for school supplies unless supplies suitable and reasonably necessary for the township have been actually delivered to and accepted by it. *Ib.*

NATIONAL BANK.

See CRIMINAL LAW, 10, 11.

NAVIGABLE RIVERS.

See CONSTITUTIONAL LAW, 6.

PARTIES.

See JURISDICTION, A, 6;
PRACTICE, 5.

PATENT FOR INVENTION.

1. Whether there was any novelty in the first claim in letters patent No. 144,818, issued November 18, 1873, to William Wright for an improvement in frames for horizontal engines, *quære*. *Wright* v. *Yuengling*, 47.
2. Inasmuch as the semi-circular connecting piece in that patented machine is described by the inventor as an essential feature of his invention and is made an element of claims 1 and 2, it must be regarded as such essential feature, and a device which dispenses with it does not infringe the patent. *Ib.*
3. When an invention is not a pioneer invention, the inventor is held to a rigid construction of his claims. *Ib.*
4. The second claim in the said patent is void for want of patentable novelty. *Ib.*
5. The combination of the cylindrical guide with the trough in that machine is not a patentable invention. *Ib.*
6. The fifth claim in reissued letters patent No. 9542, granted January 25, 1881, to Joseph Tilton and Rufus M. Stivers for a spring for vehicles, on the surrender of letters patent No. 157,430, dated December 1, 1874, is an expansion of the invention described in the original patent, and the reissue is thus invalidated. *Olin* v. *Timken*, 141.
7. Letters patent No. 197,689, granted November 27, 1877, to Henry Timken for improvement in carriage springs, are void for want of patentable novelty in the invention so patented. *Ib.*
8. Letters patent No. 239,850, granted April 5, 1881, to Cyrus W. Saladee for an improvement in spring-supports for vehicles, wagon-seats, etc., relate to a device which was anticipated by another invention made more than two years prior to the application for that patent, and reduced to practice prior to that application, and by other inventions named in the opinion of the court, and are void for want of patentable novelty. *Ib.*

9. This court will not reverse the conclusions of the master, sustained by the court below, upon the extent of the infringement of a patent, when the evidence is conflicting, unless some obvious error or mistake is pointed out. *Warren* v. *Keep*, 265.
10. Where a patent is for a particular part of an existing machine, it is necessary, in order to establish a claim for substantial damages for infringement, to show what portion of the profits is due to the particular invention secured by the patent in suit; but when the patented invention is for a new article of manufacture, the patentee is entitled to damages arising from the manufacture and sale of the entire article. *Ib.*
11. The defendants not having set up in the court below a claim for an allowance of manufacturer's profits, or offered evidence by which it could be estimated, there is no foundation on which to base such a claim in this court. *Ib.*
12. The first claims in letters patent No. 223,812, issued January 27, 1880, to William F. Olin for an improvement in harvesters, describing a swinging elevator, located upon the grain (or ascending) side of the main belt, pivoted at its lower end and movable at its upper end, is not infringed by a similar device, located upon the stubble side, pivoted at its upper end, and swinging at its lower end. *Deering* v. *Winona Harvester Works*, 286.
13. When an inventor, who may be entitled to a broader claim than he makes, describes and claims only a part of his invention, he is presumed to have abandoned the residue to the public. *Ib.*
14. Oral testimony, unsupported by patents or exhibits, tending to show prior use of a patented device is open to grave suspicion. *Ib.*
15. Unsuccessful and abandoned experiments do not affect the validity of a subsequent patent. *Ib.*
16. The 20th claim in letters patent No. 272,598, issued February 20, 1883, to John F. Steward for an improvement in grain binders is valid, and was infringed by the appellees. *Ib.*
17. The 21st claim in those letters patent was not infringed by the appellees. *Ib.*
18. In letters patent No. 77,920, granted to Herman Royer and Louis Royer, May 12, 1868, for "an improved machine for treating hides," the first claim, viz., for "a vertical shaft," and the second claim, viz., for "a grooved weight," are restricted to a shaft and crib in a vertical position, and to a weight operating by the force of gravity aided by pressure; and they cannot be extended so as to include shafts and cribs in a horizontal position, and pressure upon the hides by means of false heads, actuated and controlled by gearing wheels, springs, and a crank. *Coupe* v. *Royer*, 565.
19. In jury trials in actions for the infringement of letters patent, it is the province of the court, when the defence denies that the invention used by the defendant is identical with that included in the plaintiff's

patent, to define the patented invention, as indicated by the language of the claims; and it is the province of the jury to determine whether the invention so defined covers the art or article employed by the defendant. *Ib.*

20. The measure of recovery in a suit in equity for such infringement is the gains and profits made by the infringer, and such further damage as the proof shows that the complainant sustained in addition to such gains and profits; but in an action at law the damages are measured only by the extent of the plaintiff's loss, as proved by the evidence, and, when the evidence discloses the existence of no license fee, no impairment of the plaintiff's market, no damages of any kind, the jury should be instructed, if they find for the plaintiff, to find nominal damages only. *Ib.*
21. The machine patented to Clayton Potts and Albert Potts by letters patent No. 322,393, issued July 14, 1885, for a new and useful improvement in clay disintegrators, and the machine patented to them by letters patent No. 368,898, issued August 23, 1887, for an improvement upon the prior patent, contained new and useful inventions, and the letters patent therefor are valid, and are infringed by the machines manufactured and sold by the defendants in error. *Potts* v. *Creager*, 597.
22. The cases treating of letters patent for new applications of old devices considered, and as a result of the authorities, it is *held* that, if the new use be so nearly analogous to the former one, that the applicability of the device to its new use would occur to a person of ordinary mechanical skill, it is only a case of double use; but if the relations between them be remote, and especially if the use of the old device produce a new result, it *may* involve an exercise of the inventive faculty — much depending upon the nature of the changes required to adapt the device to its new use. *Ib.*
23. The statutes of limitation of the several States apply to actions at law for the infringement of letters patent. *Campbell* v. *Haverhill*, 610.
24. If, upon the state of the art as shown to exist by prior patents, and upon a comparison of older devices with the patent sued on in an action for infringement, it appears that the patented claims are not novel, it becomes the duty of the court to so instruct the jury. *Market Street Cable Railway Co.* v. *Rowley*, 621.
25. The claims in letters patent No. 365,754, issued June 28, 1887, to Benjamin W. Lyon and Reuben Munro for "improvements in automatic top-feed lubricators for railroad car axle-box bearings," must be construed to cover any lubricator composed of an oil cup, an outlet pipe connecting the oil cup with the axle-box containing the axle and bearing, a plug or stopper, which closes the pipe when the vehicle is at rest and opening it when there is a jolting motion, and a gauge adapted to control and limit the movement of the stopper, and to thus regulate the flow of the oil; and, being so construed, the letters

patent are void for want of novelty in the invention covered by them. *Ib.*

26. A mere carrying forward of the original thought, a change only in form, proportions, or degree, doing the same thing in the same way by substantially the same means, but with better results, is not such an invention as will sustain a patent. *Ib.*

See JURISDICTION E, 2, 3.

PETROLEUM.

See LEASE.

POSTMASTER GENERAL.

On the 1st day of May, 1870, the Postmaster General had no authority to contract in writing for the lease of accommodations for a local post office in a building for a term of twenty years. *Chase* v. *United States*, 489.

PRACTICE.

1. The objection that A. was alleged in the bill to be a resident and citizen of the District of Columbia was met by an amended allegation that A. was "a citizen of South Carolina, now residing in Washington city, District of Columbia;" and while this allegation was traversed, it must, for the purpose of this hearing, be taken as true. *Greeley* v. *Lowe*, 58.

2. Giving to the act of March 3, 1891, 26 Stat. 826, c. 517, to establish Circuit Courts of Appeals, taken as a whole, a reasonable construction, it is *held:* (1) That if the jurisdiction of the Circuit Court is in issue and decided in favor of the defendant, as that disposes of the case, the plaintiff should have the question certified and take his appeal or writ of error directly to this court; (2) that if the question of jurisdiction is in issue, and the jurisdiction sustained, and then judgment or decree is rendered in favor of the defendant on the merits, the plaintiff who has maintained the jurisdiction must appeal to the Circuit Court of Appeals, where, if the question of jurisdiction arises, the Circuit Court of Appeals may certify it; (3) that if the question of jurisdiction is in issue, and the jurisdiction sustained, and judgment on the merits is rendered in favor of the plaintiff, then the defendant can elect either to have the question certified and come directly to this court, or to carry the whole case to the Circuit Court of Appeals, and the question of jurisdiction can be certified by that court; (4) that if in the case last supposed the plaintiff has ground of complaint in respect of the judgment he has recovered, he may also carry the case to the Circuit Court of Appeals on the merits, and this he may do by way of cross-appeal or writ of error if the defend-

ant has taken the case there, or independently, if the defendant has carried the case to this court on the question of jurisdiction alone, and in this instance the Circuit Court of Appeals will suspend a decision upon the merits until the question of jurisdiction has been determined; (5) that the same observations are applicable where a plaintiff objects to the jurisdiction and is, or both parties are, dissatisfied with the judgment on the merits. *United States* v. *Jahn*, 109.

3. The docket title of this case being wrong, it is corrected by this court. *Ib.*
4. Without an appeal taken, a party will not be heard in an appellate court to question the correctness of the decree in the trial court. *Cherokee Nation* v. *Blackfeather*, 218.
5. Where the object of an action or suit is to recover the possession of real or personal property, the one in possession is a necessary and indispensable, and not a formal, party. *Massachusetts and Southern Construction Co.* v. *Cane Creek Township*, 283.
6. It was not error in the Supreme Court of the Territory of Arizona to dismiss an appeal when the appeal bond was without obligees, and not conditioned according to law. *Swan* v. *Hill*, 394.
7. W. brought an action in the Circuit Court for the District of South Carolina to recover possession of a lot of land. The defendants set up that they held for that State and had no individual rights in the premises. The Attorney General of the State, the day before the cause came on for trial, filed a suggestion that the property in controversy was used by the State for public uses, and, without submitting the rights of the State to the jurisdiction of the court, moved the dismissal of the proceedings for want of jurisdiction. The record did not show that the averments in the suggestion were either proved or admitted. The trial resulted in a verdict and judgment for the plaintiff. After the verdict and before the entry of judgment the court overruled the motion of the Attorney General. The record showed no bill of exceptions to this ruling, but it appeared by agreement of counsel that the motion was overruled and exception taken. The State sued out this writ of error. *Held*, (1) That the course pursued below as to the suggestion by the Attorney General could not be recognized as regular and sufficient; (2) that as the record did not show that the averments of the suggestion were either proved or admitted, the Circuit Court could not properly arrest the proceedings; (3) that as the State was not a party to the record, and refused to submit to the jurisdiction of the court, its writ of error should be dismissed. *South Carolina* v. *Wesley*, 542.
8. Reference cannot properly be made to a transcript of record in a case pending in another court, to supply defects in the record of a case in this court. *Ib.*

See EQUITY, 12; INDIAN, 1, 6;
EXCEPTION; JURISDICTION, A, 10, 11, 15; C, 4; D.

PRINCIPAL AND AGENT.

When a claim is founded upon an act done without the claimant's knowledge and authority by a person assuming to act as his agent, the bringing of an action by him based upon that act is a ratification of it. *Robb* v. *Vos*, 13.

See BANK;
ESTOPPEL.

PROHIBITION, WRIT OF.

1. A party is entitled to a writ of prohibition as a matter of right where it appears that the court whose action is sought to be prohibited had clearly no jurisdiction of the cause originally, or of some collateral matter arising therein, and that he objected to the jurisdiction at the outset, and has no other remedy. *In re Rice, Petitioner*, 396; *In re N. Y. and Porto Rico Steamship Co., Petitioner*, 523.
2. But where there is another remedy, by appeal or otherwise, or where the question of the jurisdiction of the court is doubtful or depends on facts which are not made matter of record, or where the application is made by a stranger, the granting or refusal of the writ is discretionary; and it is not obligatory where the case has gone to sentence, and the want of jurisdiction does not appear on the face of the proceedings. *Ib.*

PUBLIC LAND.

1. The grant of public lands to Michigan in the act of June 3, 1856, c. 44, 11 Stat. 21, to aid in the construction of "railroads from Little Bay de Noquet to Marquette, and thence to Ontonagon, and from the two last named places to the Wisconsin state line," was a grant *in præsenti*, which upon the filing of the map of definite location, November 30, 1857, operated to withdraw the lands from public domain open to settlement by individuals; and the provision in the act for forfeiture of the grant if the road should not be completed within ten years was a condition subsequent, which could only be enforced by the United States. *Lake Superior Ship Canal &c. Co.* v. *Cunningham*, 354.
2. That act contemplated separate railroads from Ontonagon to the state line and from Marquette to the state line, and was so regarded and treated by the State of Michigan. *Ib.*
3. Prior to the act of March 2, 1889, c. 414, 25 Stat. 1008, no legislative or judicial proceeding was taken by the United States, looking to a forfeiture of the Ontonagon grant; no act or resolution was passed by the legislature of Michigan retransferring it to the United States; and the conveyance executed by the Governor of Michigan, August 14, 1870, assuming to formally release it to the United States, was beyond the scope of his powers and void. *Ib.*
4. As general terms in a subsequent Congressional grant are always held not to include lands embraced within the terms of a prior grant, and

as by the filing of the map of definite location of the railroad, and the certification of the lands to the State, the lands granted by the act of June 3, 1856, had become identified and separated from the public domain before the passage of the act of March 3, 1865, c. 202, 13 Stat. 519, granting lands to Michigan to aid in the construction of a ship canal, the State acquired no title to such lands through the latter act, and whether they were or were not returned to the United States was not a question of fact, but one of law, depending upon the construction to be given to the resolution of the legislature of Michigan of February 21, 1867. *Ib.*

5. At the time of the passage of the act of March 2, 1889, c. 414, 25 Stat. 1008, forfeiting to the United States the title to the lands granted to Michigan by the act of June 3, 1856, neither the plaintiff nor the defendant had any title to the tract in controversy in this action, but, like other lands within the Ontonagon grant, it belonged to the State of Michigan, subject to forfeiture by the United States; and, construing that act, it is *Held*, (1) That § 1 grants nothing to and withdraws nothing from the parties; (2) that the provision in § 2 as to the rights of the Portage Lake Canal Company and the Ontonagon and Brule River Railroad Company means simply that neither forfeiture nor confirmation nor any other provision in the act shall be construed as a final settlement of all the claims of those companies or their grantees; (3) that the provision in § 2 as to prejudicing any right of forfeiture or recovery of the United States should not be construed as denying the confirmation granted by § 3; (4) that the provision in § 2 touching the rights of persons claiming adversely to those companies or their assigns under the laws of the United States means that the confirmation to them shall not be taken as an attempt to invalidate any legal or equitable rights as against such companies; (5) that the term "public land laws" in § 3 refers to any laws of Congress, special or general, by which public land was disposed of; (6) that the phrase "where the consideration received therefor is still retained by the government" is satisfied whenever the conditions of the attempted conveyance have been fully complied with, and apply to a homestead claim as well as to a preëmption claim; (7) that the proviso as to "original cash purchasers" is not to be taken as implying that the confirmation only extends to cash purchasers, but as also making further limitations as to some of those in whose behalf the confirmation was proposed; (8) that it was the evident intent of Congress that in all cases of conflict between a selection in aid of the canal grant and the claims of a settler, the confirmation should depend upon the state of things on the 1st of May, 1888; (9) that the words "homestead claim," as used in this act, include cases in which the claimant was, on the 1st of May, 1888, in the actual occupation of the land with a view of making a homestead of it, whether he had or had not made a formal application at the local land office; (10)

that the defendant in error Cunningham in No. 49, who was on the 1st of May, 1888, in the occupation of the tract claimed by him, was, within the terms of the confirmatory act, a *bona fide* claimant of a homestead; but the defendant in error Finan in No. 50, not being in such occupation at that date, was not entitled to the benefit of the act. *Ib.*

6. This case is governed by the rule laid down in *Lake Superior Canal &c. Co.* v. *Cunningham*, 155 U. S. 354; but, as the land in controversy is near the crossing of two lines that had received separate grants, it is further subject to the rule that where two lines of road are aided by land grants made by the same act, and the lines of those roads cross or intersect, the lands within the "place" limits of both at the crossing or intersection do not pass to either company in preference to the other, no matter which line may be first located, or built, but pass in equal undivided moieties to each. *Donahue* v. *Lake Superior &c. Ship Canal Co.*, 386.

RAILROAD.

1. It is the duty of a railroad company, running its trains in connection with other lines, and taking passengers and freight for transportation to points upon connecting lines, to carry them safely to the end of its own line, and there deliver them to the next carrier in the route beyond, and, in the absence of a special agreement to extend its liability beyond its own lines, such liability will not attach; and such agreement will not be inferred from doubtful expressions or loose language, but it must be established by clear and satisfactory evidence. *Pennsylvania Railroad Co.* v. *Jones*, 333.
2. The evidence in this case is reviewed, and it is *held* not to establish a special undertaking by the Pennsylvania Railroad Company that the plaintiffs should be safely carried in the train of the Virginia Midland Railway Company, while proceeding along the road of the Alexandria and Washington Railroad Company, between the cities of Alexandria and Washington; but that there was evidence which would warrant a jury in finding that the Baltimore and Potomac Railroad Company, the Alexandria and Washington Railroad Company, and the Alexandria and Fredericksburg Railway Company had made such a special undertaking, and were jointly liable to the plaintiffs under it. *Ib.*
3. An advertisement by a railroad company that it runs or connects with trains of another company, so as to form through lines without breaking bulk or transferring passengers, does not tend to show a contract between the companies to share profits and losses. *Ib.*
4. When a railroad for which a receiver has been appointed is practically managed and controlled by the agents and employés of the company, and the receiver's function as to business with connecting lines is restricted to the receipt of its share of the net earnings, and a passenger who receives an injury while being transported upon it to a

connecting line, brings an action against the company and other connecting lines to recover damages therefor, there is no error in instructing the jury that if they shall find the company guilty of negligence their verdict will be against it. *Ib.*

5. In this case the Alexandria and Fredericksburg Railway Company further set up that at the time of the happening of the injury causing the damages sued for, the road was in the hands of mortgage trustees, and that it therefore was not then a common carrier. *Held*, there was evidence which justified the court in submitting the question of the exclusive possession by the trustees to the jury, and that there was no error in instructing the jury that in order to acquit the company from responsibility, it should be shown that the management and operation of the road was conducted by the trustees, to the entire exclusion of the company, its officers and board of directors, and that this fact was notorious and could be presumed to be known to the public. *Ib.*

REGULATION OF COMMERCE.

See CONSTITUTIONAL LAW, 6, 7.

REMOVAL OF CAUSES.

1. Under the acts of March 3, 1887, c. 373, and August 13, 1888, c. 866, a case (not depending on the citizenship of the parties, nor otherwise specially provided for) cannot be removed from a state court into the Circuit Court of the United States, as one arising under the Constitution, laws, or treaties of the United States, unless that appears by the plaintiff's statement of his own claim; and, if it does not so appear, the want cannot be supplied by any statement in the petition for removal or in the subsequent pleadings. *Chappell* v. *Waterworth*, 102.

2. An action of ejectment, brought in a state court between two citizens of the same State, in which the declaration merely describes the land and alleges an ouster of the plaintiff by the defendant, cannot be removed into the Circuit Court of the United States upon the petition of the defendant, setting forth that the United States own and hold the land for a light-house, and have appointed him keeper thereof. *Ib.*

3. Under the acts of March 3, 1887, c. 373, and August 13, 1888, c. 866, a case (not depending on the citizenship of the parties, nor otherwise specially provided for) cannot be removed from a state court into the Circuit Court of the United States, as one arising under the Constitution, laws, or treaties of the United States, unless that appears by the plaintiff's statement of his own claim; and, if it does not so appear, the want cannot be supplied by any statement in the petition for removal or in the subsequent pleadings. *Postal Telegraph Cable Co.* v. *Alabama*, 482.

4. *Chappell* v. *Waterworth*, 155 U. S. 102, affirmed and applied to the point that, under the acts of March 3, 1887, c. 373, and August 13, 1888, c. 866, a case (not depending on the citizenship of the parties, nor otherwise specially provided for) cannot be removed from a state court into the Circuit Court of the United States, as one arising under the Constitution, laws, or treaties of the United States, unless that appears by the plaintiff's statement of his own claim; and if it does not so appear, the want cannot be supplied by any statement in the petition for removal, or in the subsequent pleadings. *East Lake Land Co.* v. *Brown*, 488.

RESERVATION IN A LEASE.

See LEASE.

SALE UNDER EXECUTION.

On the facts in this case detailed in the opinion it is *held*, that, by the payment into court by the purchaser at the execution sale of the amount of the principal and interest due the plaintiff in the equity suit, and the conveyance of the lands to the purchaser, the latter became vested with a fee simple to said lands. *Robb* v. *Vos*, 13.

STATUTE.

A. CONSTRUCTION OF STATUTES.

1. It is a general rule that provisions in statutes imposing taxation, though not in terms mandatory, are to be regarded as such if necessary for the substantial protection of the taxpayer. *Erhardt* v. *Schroeder*, 124.
2. The customs laws, however, give to the complaining importer an ample remedy, only putting him to the inconvenience of seeking it in a legal tribunal. *Ib.*

B. STATUTES OF THE UNITED STATES.

See ADMIRALTY, 2;
CONSTITUTIONAL LAW, 2;
CRIMINAL LAW, 10, 13, 14;
CUSTOMS DUTIES, 3, 9;
EQUITY, 4, 13;
INDIAN, 2, 8;
JURISDICTION, A, 3, 8, 15; C, 1, 3; E, 4;
MUNICIPAL BOND, 1;
PRACTICE, 2;
PUBLIC LAND, 1, 3, 4, 5;
REMOVAL OF CAUSES, 1, 3, 4;
SUPERVISORS OF ELECTIONS.

C. STATUTES OF STATES AND TERRITORIES.

Arizona. *See* MUNICIPAL BOND, 1.
Arkansas. *See* JURISDICTION, C, 6.
California. *See* CONSTITUTIONAL LAW, 7.
Indiana. *See* MUNICIPAL BOND, 3.
Iowa. *See* EQUITY, 4.
Massachusetts. *See* CONSTITUTIONAL LAW, 3.
Michigan. *See* PUBLIC LAND, 3.
Mississippi. *See* CONSTITUTIONAL LAW, 9.

STATUTES OF LIMITATION.
See PATENT FOR INVENTION, 23.

TAX AND TAXATION.
See STATUTE, A, 1, 2.

TAX SALES.
See JURISDICTION, C, 6.

SUPERVISORS OF ELECTIONS.

A chief supervisor of elections, appointed under the provision of Rev. Stat. § 2025, is not required by law to make copies of the list of registered voters returned to him, nor to arrange them in alphabetical order after filing them, and is not authorized to charge the United States for such services voluntarily performed. *Sherman* v. *United States*, 673.

UNITED STATES, SUITS AGAINST.

1. The United States cannot be sued in their courts without their consent. *Schillinger* v. *United States*, 163.
2. In granting such consent Congress has an absolute discretion to specify the cases and contingencies in which the liability of the government is submitted to the courts for judicial determination, and courts may not go beyond the letter of such consent. *Ib.*

See JURISDICTION, A, 15; E.

WRIT OF ERROR.
See JURISDICTION, A, 10, 15.

WRIT OF PROHIBITION.
See PROHIBITION, WRIT OF.